sion who were then his employers. The said land was to be registered in joint-ownership but the loan arrangements necessitated the registration of the said land in the name of the respondent (appellant). It was the understanding between us that the respondent (appellant) pay the monthly instalments on the loan and I paid to maintain and upkeep the house, provide and pay for the children, pay for their music lessons, costs of schooling, wages for the servants to which end the respondent (appellant) contributed $35 weekly and $100 towards the monthly accounts. I also paid for the purchase of furniture and fittings for the house, initial renovation, cost of building a garage and repainting the house two years later. The expenses for all this amounted to approximately $6,000."

That was not traversed nor fully argued before the learned judge. His remark on the matter was that, as far as the joint property was concerned, the appellant had agreed in the Deed of Separation itself that the net proceeds from the sale of the joint property should be equally divided between them.

Before us it was contended that the Deed of Separation was a temporary arrangement and as such that particular provision relating to the joint property terminated by the marriage of the respondent. That may be so, but one cannot run away from the fact that she contributed to the purchase and running of the matrimonial home. "Contributions" says Lord Pearson in *Gissing* v. *Gissing*[8] "are not limited to those made directly in part payment of the price of the property or to those made at the time when the property is conveyed into the name of one of the spouses. For instance there can be a contribution if by arrangement between the spouses one of them by payment of the household expenses enables the other to pay the mortgage instalments." In my opinion, where both parents are working and have agreed to share in the purchase and running of the matrimonial home, then *prima facie*, the proceeds of sale thereof are to be divided between them in equal shares. Lord Denning L.J. (as he then was) took a similar view in *Fribance* v. *Fribance*[9] where he said:

"In the present case it so happened that the wife went out to work and used her earnings to help run the household and buy the children's clothes, whilst the husband saved. It might, very well have been the other way round. The husband might have allotted to the wife enough money to cover all the housekeeping and the children's clothes, and the wife might have saved her earnings. The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their earnings and their expenditure. The whole of their resources were expended for their joint benefit — either in food and clothes and living expenses for which there was nothing to see or in the house and furniture which are family assets — and the product should belong to them jointly. It belongs to them in equal shares."

I would dismiss the appeal with costs.

Lee Hun Hoe Ag. L.P. and **Ali Ag. C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Gan Teik Chee; Mathuram & Co.*

CHEW SOON TAT v. MALAYSIA NATIONAL INSURANCE SDN. BHD.

[F.C. (Ali Ag. L.P., Ong Hock Sim and Wan Suleiman F.JJ.) January 31, 1977]
[Kuala Lumpur — Federal Court Civil Appeal No. 93 of 1976]

Contract — Guarantee — Liability of guarantor — Whether liable for liabilities incurred before date of guarantee.

In this case the appellant gave a letter of guarantee to the respondent whereby the appellant undertook to stand guarantee to the extent of one hundred thousand dollars ($100,000) only on behalf of Messrs. Senibert Sendirian Bhd. Messrs. Senibert Sendirian Bhd. had been sued for $202,226.19 in respect of policies sold and premium collected on behalf of the respondent. Judgment in default was entered against them. In the same suit a claim was made against the appellant for the sum of $100,000 in terms of the letter of guarantee. The learned trial judge gave judgment in favour of the respondent. The appellant appealed.

Held: (1) the letter of guarantee could not be impugned on grounds of absence or want of consideration;

(2) a guarantor would only be liable for debts or liabilities incurred after the date of the guarantee;

(3) in this case therefore the order of the learned trial judge would be varied to one of payment of such sum as may be found due in respect of policies sold and premium collected after the date of the letter of guarantee.

Cases referred to:

(1) *Wood* v. *Benson* 2 C. & J. 94.

(2) *Morrel* v. *Cowan* (1877) 7 Ch. D. 151.

(3) *Sigma Cable Co. Ltd.* v. *Nam Huat Electric & Sanitary Co. & Ors.* [1972] 1 M.L.J. 7.

FEDERAL COURT.

O.L. Phipps (*Ong Chin Beng* with him) for the appellant.

G. Pillay (*Ranjan* with him) for the respondent.

Ali Ag. L.P. (delivering the judgment of the Court): This appeal concerns a Letter of Guarantee given by the appellant to the respondent signed on April 3, 1972, whereby the appellant "hereby undertake to stand guarantee to the extent of One hundred thousand dollars ($100,000) only on behalf of Messrs. Senibert Sendirian Berhad."

The first defendant, the company, was sued in C.S. 211/1973 for $202,226.19 in respect of policies sold and premia collected on behalf of the respondent, the Malaysia National Insurance Sdn. Bhd. Judgment in default was entered in favour of Malaysia National Insurance Sdn. Bhd. in default of appearance by first defendant. In the same suit, a claim was made against the appellant herein for the sum of $100,000 in terms of the said letter of April 3, 1972. It was contended, *inter alia*, that there was no consideration for the said letter as stated in paragraphs 1, 2 and 3 of the Statement of Defence; allegations as to misrepresentation and fraudulent inducement in paragraphs 4 and 5 were abandoned. The issue therefore before the learned judge was solely on the question whether there was consideration to support the Letter of Guarantee. On all the evidence before him, which was that given by one witness for the plaintiff and the appellant himself, there was no other evidence other than the Letter of Guarantee (P1) and the Notice of Termination (P2). We are of opinion that P2 is wholly irrelevant in the light of the pleadings which claimed $202,226.19 in respect of sums due on policies sold and premia collected from December 26, 1970 to July 31, 1972. We do not think that we can now

consider whether termination was on November 30, 1972 upon the pleadings.

Here we need only refer to the following cases for the proposition that the guarantee would be in respect of liabilities incurred after the date thereof: — *Wood* v. *Benson,*[1] *Morrel* v. *Cowan*[2] and *Sigma Cable Co. Ltd.* v. *Nam Huat Electric & Sanitary Co. & Ors.*[3]

In all these cases, the courts were of the view that the guarantor was liable only for debts or liabilities incurred after the date of the guarantee.

Despite the loose wording of the Letter of Guarantee, we agree with the learned judge that it cannot be impugned on grounds of absence or want of consideration. Having found there was no basis for challenging the validity of the guarantee, the learned judge gave judgment in favour of the respondent for the sum of $100,000 as claimed in terms of P1.

With respect, we do not think upon the evidence given on benalf by respondent that a sum of about $51,000 only was due from April 3, 1972 to July 31, 19/2 in respect of premia due from 1st defendant that the respondent can seek to benefit from the obvious intention benind the said letter to indemnify the respondent from losses up to $100,000 only for and resulting from continuing the agency of the first defendant after April 3, 1972. There was no expression of intention, nor can we be justified in holding, that the appellant accepted and/or undertook liabilities prior to April 3, 1972.

As we have stated earlier, the letter was loosely worded. We do not think that, having regard to the *contra proferentem* principle, the construction should be that the appellant undertook as a condition of *continuing,* not *giving,* the agency (which already existed but was under threat of termination), to accept liability for sums incurred prior thereto and which were not communicated to, nor contemplated by, him. There was in our view, a question of construction of the Letter of Guarantee as to the operative date and the extent of liability. Noting that the extension was granted for just over 4 months, it seems to us that advantage was taken of the appellant to make him liable to contribute towards repayment of liabilities incurred before April 3, 1972, that is, before the date of the guarantee and in the absence of express acceptance or undertaking of liability therefor.

We would allow the appeal to the extent that the order for payment of the sum of $100,000 in terms of the Letter of Guarantee of April 3, 1972 be varied to one for payment of such sum as may be found due by the Senior Assistant Registrar in respect of policies sold and premia collected in respect of the operative date of the guarantee namely April 3, 1972 up to July 31, 1972 up to a limit of $100,000.

Order for costs awarded in the court below is not affected but there will be order for costs to appellant in this appeal and refund of deposit.

Order accordingly.

Solicitors: *Ong Chin Beng & Partners; Tunku Zuhri, Manan & Abdullah.*

SOH BOK YEW v. CINDEE DEVELOPMENTS SDN. BHD.

[F.C. (Ali Ag. C.J. (Malaya), Raja Azlan Shah and Wan Suleiman F.JJ.) February 9, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 80 of 1976]

Bankruptcy — Application to set aside bankruptcy notice and adjudicating and receiving orders — Act of bankruptcy — Bankruptcy Rules, r. 95 — Bankruptcy Act, 1967, ss. 5 and 92.

In this case the respondents had obtained judgment against the appellant. A bankruptcy notice had been issued against the appellant. The appellant filed an affidavit and this operated as an application to set aside the notice. The learned trial judge then postponed hearing the application to set aside the notice from time to time and finally dismissed it, immediately after which he considered the Bankruptcy Petition and issued an Adjudicating Order and Receiving Order. The appellant therefore applied to have the bankruptcy notice and the receiving and adjudicating orders set aside. His application was dismissed in the High Court and he appealed to the Federal Court.

Held: (1) the act of bankruptcy in this case was committed when the learned judge dismissed the application to set aside the bankruptcy notice.

(2) it had not been shown that the learned trial judge was wrong in doing what he did. He had considered the issues raised by the debtors in the various actions and was satisfied that once the act of bankruptcy had been committed on his dismissing the application to set aside the notice, any further delay to provide the respondents with relief would, in the peculiar circumstances surrounding this case and the connected suits, defeat the ends of justice.

Case referred to:-

(1) *In re a Debtor No. 10 of 1953* [1953] 1 W.L.R. 1050.

FEDERAL COURT.

Stanley Ponniah (*Leow Shin Fong* with him) for the appellants.

Wong Soon Foh for the respondents.

Wan Suleiman F.J.: This is an appeal against the dismissal of an application to set aside a bankruptcy notice issued by the respondents the judgment creditors against appellant the judgment debtor, and the Receiving and Adjudicating Orders made by the learned judge immediately thereafter.

The facts set out by the learned judge in his grounds of judgment sum up briefly, but if I may say with respect, most adequately the sequence of events which led to the present appeal. The relevant part of this judgment is set out in extenso hereunder:

"The bankruptcy notices and petitions in these 3 cases were founded on a judgment in Civil Suit No. 187 of 1972. The judgment was for a sum of $152,065.08¢ with interest and costs. It was entered on an O.14 application. But a stay of execution was ordered until the disposal of the counterclaim. An appeal from the decision of the Senior Assistant Registrar on the Order 14 application was lodged but the learned judge who heard it had no difficulty in dismissing the appeal. No further action was taken and the judgment must now stand as a judgment lawfully obtained and perfected. The counterclaim was with leave withdrawn on March 3, 1975. With its withdrawal, the order for stay lapsed and the judgment-creditor could and did proceed with execution. It finally took bankruptcy proceedings. The petitions were for $179,436.78¢ which would include interest and costs.

The reply of the judgment-debtor was to start an action in Civil Suit No. 1583 of 1975 to set aside the judgment.

This case has still to be heard, but there is an application by the creditor to set it aside as an abuse of the process of